



# BIENNIAL

<http://www.hawaii.gov/hirec>

February 2010

## 2010 NEW YEAR RENEWAL REMINDERS

It's 2010!!! Renewal year!!! Probably not the first thought that pops into your mind at this time, but there are some important things to remember in order for your license renewal to go smoothly.

1. Continuing education – If you have not already taken Part A of the Commission's Mandatory Core Course, 2009-2010, your only option in 2010 is to take the course in an online format.

In 2009, 6,014 licensees took Part A in a live classroom format. Only 49 licensees took Part A online.

2. You may check your CE history on the Commission's CE Online System: [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec), click on CE Online System, click on My CE Status. You will need to input your real estate salesperson or broker license number and the last 4 digits of your Social Security Number. You will not be able to receive CE credit for the same CE course, so check your CE history before you register for a CE elective course.

3. For licensees who take MORE than the required 10 hours of continuing education during a licensing biennium, please inform the CE Provider before you take the course, that you do NOT want CE credit for the course. This will prevent the course being entered into your CE history, thus preventing you from receiving CE credit in the following biennia should you decide to take the course again for CE credit.

4. Part B of the Commission's

Core Course, 2009-2010, is targeted for availability about June, 2010. Again, Part B will be available in a live classroom and online format until December 31, 2010. Beginning January 1, 2011, Part B will only be offered in an online format, along with Part A.

5. Renew your license online! There will once again be a discount for renewing your license online. Details will be made available closer to the renewal deadline of November 30.

6. Any individual licensee not completing the CE requirement will be renewed on an inactive status without further notice (upon payment of renewal fee).

7. Principal Brokers and Brokers in Charge should complete all CE requirements as soon as possible as successful renewal includes completion of CE requirements prior to submission of a renewal application. If the PB's, BIC's, and/or the brokerage firm's license are not successfully renewed prior to the associating licensees, all associating licensees will be renewed on inactive status.

8. New Salesperson in 2010: If you were issued a new salesperson license in calendar year 2010 and renew your license by the renewal application deadline of November 30, 2010, you will be deemed to have completed equivalent to the CE requirement and will not have to complete the CE requirement for this license renewal

## NEW LICENSEES DECLINE IN 2009

The number of new licenses issued in FY 2009 decreased 37.7% over the prior fiscal year. During FY 2009, 1,190 new licenses were issued.

Individual broker licenses decreased by 9%, new salesperson licenses decreased by 44.6%, and new entity licenses decreased by 2.5%. See Chart 12 below.

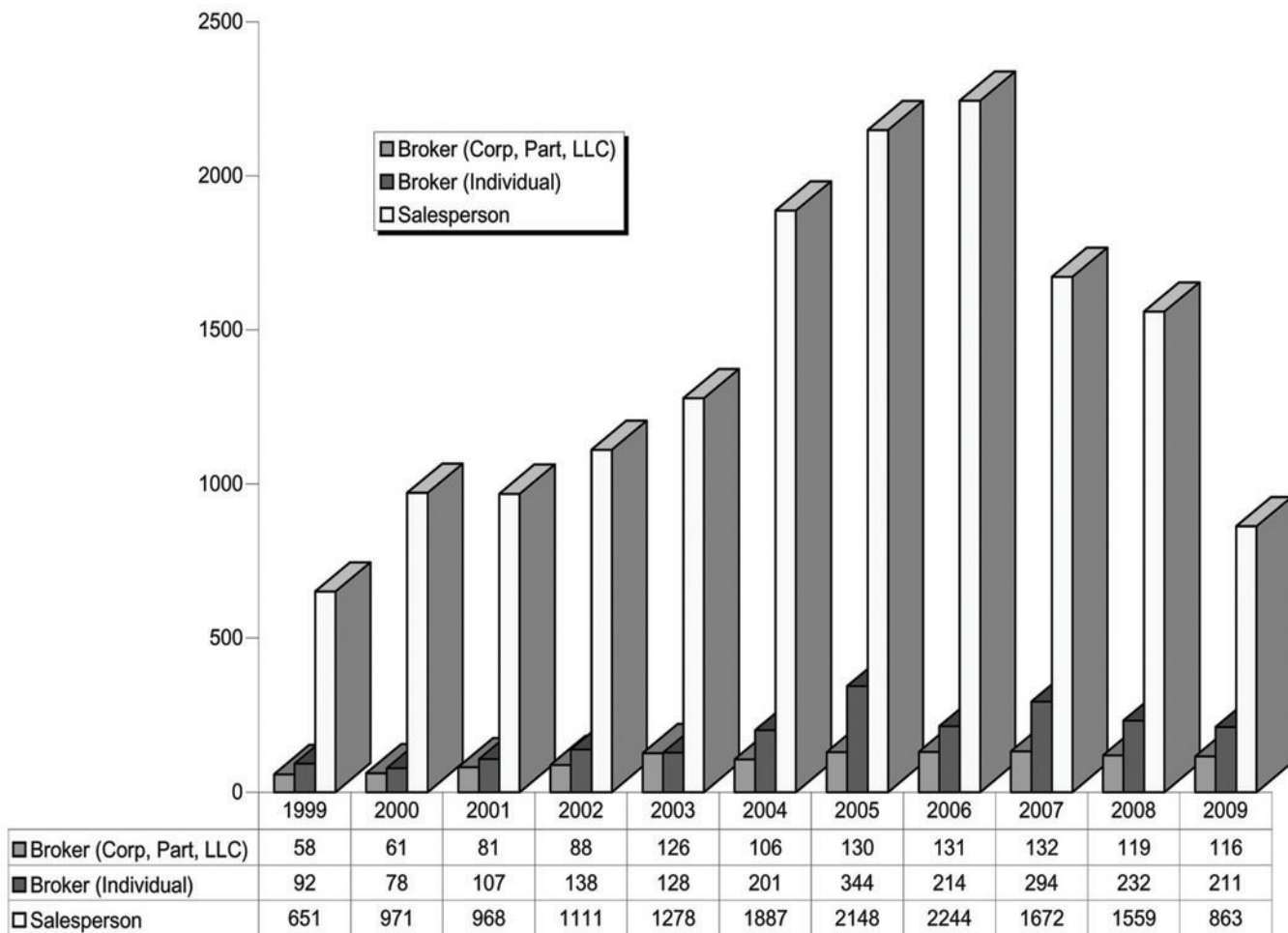


CHART 12. New Real Estate Licenses Issued

## *The Chair's Message*

Happy New Year!

The Commission's mandatory core course 2009-2010, Part A is available on-line only, effective January 1st. There are about 10,000 licensees from a total of about 16,000 (this number includes both active and inactive licensees), who will have to take Core A on-line before the end of this year. There are no live classroom offerings of Part A in 2010. Starting in June 2010, Core B is expected to be available for live classroom instruction. All licensees must complete 10 hours of CE which includes Core A and B, for 4 hours, and 6 hours or 2 elective CE courses. Six-hour CE courses are also available. During each year of the licensing biennium, Plan accordingly so you don't miss out on the opportunity for a live classroom offering of the core course.



Trudy Nishihara

In 2009, the Commission testified on two major issues impacting real estate licensees during the legislative session. As a result, Act 66 was created which limits real estate licensees' participation in distressed property sales of properties listed with the licensee or within 365 days after the listing agreement for the distressed property has expired or is terminated. The Commission also supported exemption of real estate licensee's work activities from the proposed rule changes regarding the unlicensed practice of law.

The real estate industry continues to undergo many changes as it reacts to the volatile economy, which has been on a downward trend throughout 2009. Mortgage fraud, short sales and foreclosures are increasing, acting as red flags to real estate licensees to become more cognizant of these activities and to learn how to help their consumer clients avoid these types of situations. Real estate education is a primary means to increase awareness and encourage appropriate solutions.

The Commission is working together with the Honolulu Board of Realtors and the Hawaii Association of Realtors to improve the education of real estate licensees. In hard, economic times, more salesperson licensees upgrade to a broker's license, and open their own brokerages. While it is not illegal to hold both a mortgage solicitor's or broker's license and a real estate license, licensees must remember to make full disclosure of their license status when engaging in a real estate and/or mortgage transaction.

The Commission also believes that education is an important element in maintaining high standards within the industry and to reduce consumer complaints. The Commission's Education Review Committee, chaired by Carol Ball, Broker, Maui, and Vice-chair Annette Aiona, Broker, Big Island, are committed to improving continuing education, both in quality and in the number of courses of available. "Going Green" is the mandate of the day, and the "green movement" has finally become mainstream. Consumers are more conscious and supportive of new directions toward conservation and protecting the environment than ever before. Continuing education courses are being approved to include this new consciousness.

For questions, comments, or concerns, please contact the Real Estate Branch at 808-586-2643, email at [www.hawaii.gov/hirec](mailto:www.hawaii.gov/hirec), or direct mail to 335 Merchant Street, Room 333, Honolulu, HI 96813.

# PERSONAL TRANSACTIONS

## Principal Brokers are Responsible

“Personal Transactions” is the topic for Part A of the Commission’s 2009-2010 mandatory core course. The topic created quite a stir among licensees who took Part A in 2009. Now it is only available in an online format, and unfortunately, those licensees who take Part A online this year will probably miss out on some enlightening discussion regarding the material presented.

The laws and rules regarding personal transactions are not new. In fact, the two cases that provided the impetus for the laws and rules relating to licensee’s own real estate transactions to be added to Hawaii Revised Statutes (HRS) Chapter 467 and Hawaii Administrative Rules (HAR) Chapter 99 took place in the mid- to late 1980’s!

The principal broker, and by delegation, a broker-in-charge, have tremendous responsibilities to directly manage and supervise all real estate activity engaged in by the brokerage and its associated licensees.

Here is guidance from the real estate licensing laws and rules to help guide your actions when engaging in a personal transaction(s) such as leasing/renting personal property or selling personal property:

1) HRS, §467-1, definition of “real estate salesperson” states, “... Every real estate salesperson shall be under the direction of a real estate broker for all real estate transactions.” There are NO EXCEPTIONS noted.

2) HRS, §467-14, states “...Disciplinary action may be taken by the commission whether the licensee is acting as a real estate broker, or real estate salesperson, or on the licensee’s own behalf.” (emphasis added) Again, there are NO EXCEPTIONS noted. This amended Chapter 467, HRS in 1985.

3) Hawaii Administrative Rules (HAR), “§16-99-3 Conduct. (a) To fully protect the general public in its real estate transactions, every licensee shall conduct business,

including the licensee’s own personal real estate transactions, in accordance with this section.” (emphasis added)

4) HAR, §16-99-3(g) states, “the licensee shall not acquire, rent, lease or exchange an interest in or buy, rent, lease, or exchange for one’s self, any member of the licensee’s immediate family or brokerage firm, or any entity in which the licensee has any ownership interest, property listed with the licensee, licensee’s brokerage firm, or listed with any other brokerage firm or licensee without making the true position known in writing to the listing owner or property owner.

When offering for sale, lease, exchange, or rental, property which the licensee owns or has an interest in, the licensee shall fully inform the principal broker of the licensee’s intention to sell, lease, exchange, or rent, and of the licensee’s interest in the property. The licensee shall reveal the interest to the purchaser, leasee, or tenant in writing prior to accepting any offer.”

The licensee selling his/her own property must inform his/her principal broker when he/she is selling (or leasing, exchanging, renting) his/her own property. The licensee must also disclose his/her ownership interest to the purchaser, leasee, or tenant in writing prior to accepting any offer.

Note that a licensee who is associated with one brokerage firm may list his/her property with another brokerage firm. The licensee’s principal broker should be aware of what’s going on.

It may be that the principal broker’s policies and procedures require its associated licensees to sell personal real estate property through the brokerage.

Check with the principal broker and the policies and procedures manual to be sure.

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5) HAR, §16-99-11(b), states, “No licensee shall advertise “For Sale by owner,” “For Rent by Owner,” “For Lease by Owner,” or “For Exchange by Owner.”

A real estate licensee, whether active or inactive, is bound by the licensing laws and rules. A licensee cannot remove his/her license “hat” when they put their license on inactive status. So, for the licensee who, for whatever reason, goes inactive, but then wants to sell his/her own property, any advertisement regarding the sale of his/her own property cannot include “for sale by owner”. This also applies to the active licensee.

6) HAR, §16-99-11(c), states, “Current individual real estate licensees, whether active or inactive, shall disclose the licensee’s status as a real estate licensee in all advertising and promotional material.”

Again, “whether active or inactive” is key. An inactive licensee must disclose his/her inactive status in all advertising, if they are selling their own property. An inactive licensee may not engage in any other real estate activity, however, as they must be on active status and associated with a brokerage, if they are a salesperson or broker-salesperson.

7) HRS, §467-1.6, Principal brokers. This section describes the principal broker’s responsibilities. This section was added to HRS Chapter 467 in 1999. No where in this section does it exclude personal real estate transactions from the principal broker’s oversight. If you take into consideration the definition of real estate salesperson (HRS, section 467-1, see above) and the responsibilities of the principal broker as stated in HRS, section 467-1.6, there is a definite conclusion that the principal broker may be held responsible for any associated salesperson’s personal real estate transactions, under the supervision of the principal broker or not.

8) HAR, §16-99-4 Client’s account; trust

funds; properties other than funds. (a) “Every brokerage firm that does not immediately place all funds entrusted to the brokerage firm in a neutral escrow depository, shall maintain a trust fund account in this State with some bank or recognized depository, which is federally insured, and place all entrusted funds therein. The trust fund account shall designate the principal broker as trustee . . . .” Notice that the trustee for the account is the principal broker. Associated real estate licensees cannot open up and maintain their own, separate client’s trust accounts.

All monies must pass through the brokerage. When handling the rental of personal property, the real estate salesperson or broker-salesperson must have a written and signed property management agreement in place, either with his own broker / brokerage, OR another broker / brokerage.

The rental monies must flow through the brokerage with which the property management agreement is with. The principal broker of the licensee renting his personal property under another brokerage is NOT off the hook as far as responsibility for the licensee’s personal transactions.

There are more and more new real estate brokers who are going on their own. They are either sole proprietors or form their own entity, and are the principal broker of the brokerage. Most entities (maybe about 75%) are one-person operations or have at most, two or three associated licensees. Maybe 10% of brokerages have more than 15 associated licensees.

From information gathered from telephone inquiries at the Real Estate Branch, it appears that many one-person or two-three-person brokerages may not have policies and procedures manuals. The principal broker of the brokerage, no matter how large or small, is still THE ONE responsible to directly manage and supervise the brokerage and all its associated licensees. It’s a tough job!

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### **R&M MANAGEMENT, LLC aka RM MANAGEMENT, LLC, ROBERT B. MARPLE REC 2007-26-L**

R&M Management, LLC also known as R M Management, LLC was licensed by the Real Estate Commission as a real estate broker under license no. RB 18120 on October 6, 2003. This license is scheduled to expire on December 31, 2010.

In 2004, an inquiry arose as to whether the representation in an advertisement the Respondents were using to sell property located at 98-1167 Ilikee Street, Aiea, HI (aka Enchanted Villa) was true at the time. The Respondents had listed for sale the Enchanted Villa (which consisted of two dwellings) for one million three hundred thousand dollars. The advertisement also stated "legal CPR completed. To be sold as one."

RICO asserted that if the allegations were proven true at an administrative hearing before the Commission, it would constitute violations of HRS 436B-19 (2) False or deceptive advertising, or making untruthful or improbable statements; and HRS 467-14 (13) Violating the chapters and/or rules of the Commission.

Respondents do not admit to RICO allegations and vehemently deny any wrongdoing or violation of any law or rule. In order to resolve this case and conserve on the costs that would occur with an administrative hearing, the Respondents have entered into this Settlement Agreement freely, knowingly and voluntarily without any coercion or duress. Respondents are aware and understand that this Settlement Agreement will become public record pursuant to HRS Chapter 92F.

The terms of the Settlement Agreement were payment of an administrative fine of \$500.00 to the DCCA Compliance Resolution Fund. The fine shall be due in full no later than 30 days after approval of this Settlement Agreement by the Commission. In addition, if the Respondent fails to abide by the terms of the Settlement Agreement; the Commission

could impose further disciplinary action as provided by law to include additional fines and other sanctions.

The Settlement Agreement was approved by the Commission on September 25, 2009.

### **MERIDIAN PROPERTIES, INC, JERRY D.C. PARK AND LYNNE A. FUJITA-CHUNG REC 2008-206-L**

Meridian Properties, Inc. was licensed by the Real Estate Commission as a real estate broker on August 25, 1978 under license number RB 9824. This license is scheduled to expire on December 31, 2010. Meridian Properties' broker Jerry D. C. Park was licensed by the Commission as a real estate broker under license number RB 8852 on December 8, 1988. This license is scheduled to expire on December 31, 2010. Also employed by Meridian Properties, Inc. is Lynne A Fujita-Chung, a real estate salesperson under license number RS 43693. Her license was issued on or about December 8, 1988 and is scheduled to expire on December 31, 2010.

Sometime in 2006, Mr. Shinichi Murayama (also known as Kevin Murayama) represented himself as a real estate salesperson and broker for Meridian Properties, Inc. Mr. Murayama however, was not licensed as a real estate salesperson because his license had expired December 31, 1996. However, acting as an agent for Meridian, Mr. Murayama purchased real estate for Ms. Mi Soon Hastings.

According to the DROA, Mr. Murayama was the agent in the sale and Ms. Hastings was represented by Respondent Meridian Properties, Inc. and Respondent Lynne Fujita-Chung. As a result, Mr. Murayama received a consultant fee check in the amount of \$5,049.96 on September 28, 2006 for Ms. Hastings' real estate purchase.

RICO alleges that the Respondents violated the following Hawaii Revised Statutes: HRS 467-14 (14) Splitting fees with

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hereunder for referring business; provided that notwithstanding paragraph (5), a real estate broker may pay a Commission to: (A) A licensed real estate broker of another state, territory, or possession of the United States if that real estate broker does not conduct in this State any of the negotiations for which a Commission is paid; (B) A real estate broker lawfully engaged in real estate brokerage activity under the laws of a foreign country if that real estate broker does not conduct in this State any of the negotiations for which a Commission is paid; or (C) A travel agency that in the course of business as a travel agency or sales representative, arranges for compensation the rental of a transient vacation rental; provided that for purposes of this paragraph "travel agency" means any person that, for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services, including an air or ocean carrier; HRS 436-19 (6) Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license; and HRS 436B-19 (16) Employing, utilizing or attempting to employ or utilize at any time a person not licensed under the licensing laws where licensure is required.

Respondents admit to the veracity of the allegations and that the Respondent's acts violate the statutes stated. As such, Respondents enter into this Settlement Agreement as a compromise of the claims and to conserve on the expenses that would arise from an administrative hearing. Respondents entered into this Settlement Agreement freely, knowingly, voluntarily, and under no coercion or duress.

The terms of the Settlement Agreement were payment of a fine in the amount of \$3,000.00 to the DCCA Compliance Resolution Fund. Payment of the fine shall be due at the time this fully executed Settlement Agreement is returned to RICO.

In addition, if the Respondent fails to abide by the terms of the Settlement Agreement; the Commission could impose

further disciplinary action as provide by law to include additional fines and other sanctions.

The Settlement Agreement was approved by the Commission on September 25, 2009.

### **WILTON I. LOMBARD REC 2008-132-L**

On December 15, 2008, the Hearings officer submitted to the Commission the Findings of Fact, Conclusions of Law and Recommended Order. The Hearings Officer concluded that Respondent Lombard violated HRS 467-14 (20) Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealings, and 436B-16 Notice of Judgments, penalties (a) Each licensee shall provide written notice within thirty days to the licensing authority of any judgment, award, disciplinary sanction, order, or other determination, which adjudges or finds that the licensee is civilly, criminally, or otherwise liable for any personal injury, property damage, or loss caused by the licensee's conduct in the practice of the licensee's profession or vocation. A licensee shall also give notice of such determinations made in other jurisdictions.

On December 30, 2008, RICO filed Exceptions to the Recommended Order and requested oral argument. On February 27, 2009, the Commission considered this matter. RICO presented its oral argument and Respondent Lombard did not appear. Upon review of these findings, the Commission found the Respondent guilty of violating HRS 467-14 (20) and 436B-16 and granted RICO's motion for summary judgment.

On March 11, 2009, the Commission modified the Hearings Officers' recommended sanctions and issued its Proposed Final Order. Respondent filed his Exceptions to the Final Order on March 29, 2009 and on April 3, 2009, RICO filed its Statement in Support of the Commission's Proposed Final Order.

On May 29, 2009, the Commission considered this matter again. Neither Petitioner (RICO) nor Respondent (Lombard) appeared.

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(RICO) nor Respondent (Lombard) appeared.

Accordingly, the Commission adopts its Proposed Final Order dated March 11, 2009 and orders as follows:

1. Respondent shall pay a fine of two thousand five hundred dollars (\$2,500.00) to the DCCA Compliance Resolution Fund within thirty (30) days of Commission's Final Order.

2. Respondent shall pay the judgment in the amount of two thousand eight hundred nineteen dollars and ninety-three cents (\$2,819.93) to Sterling Carpet, Inc. within 30 days of Commission's Final Order and notify Patrick K. Kelly Esq. (RICO's attorney) in writing of payment.

3. If Respondent fails to pay administrative fine and judgment his real estate salesperson license will be suspended without further administrative hearing. Reinstatement of the suspended license would be subject to payment of fine and judgment and Respondent shall be required to meet all applicable licensing requirements.

4. In addition, if Respondent fails to abide by any term of the Commission's Final Order, the Commission at its discretion may pursue additional disciplinary action as provided by HRS 92-17 (Consumer complaints; procedures and remedies) and any other applicable law to include further fines and other sanctions as the Commission may deem appropriate.

This Final order was approved and executed by the Commission on June 4, 2009.

On July 14, 2009, Respondent Lombard was notified by RICO in writing that he had violated the terms of the Commission's Final Order and was now subject to license suspension.

On September 30, 2009, the Real Estate Commission suspended the real estate license of Wilton Lombard (RS 69771) effective as of September 25, 2009.

### ZENAIDA WONG LOPEZ REC 2007-233-L

Zenaida Wong Lopez was licensed as a real estate salesperson (License RS 43209) on September 12, 1988. Her license is scheduled to expire on December 31, 2010.

On or about March 13, 2007, Respondent was indicted on six counts of willful failure to file her annual general excise tax return and six counts of attempting to evade or defeat the tax by falsely reporting her income.

On or about September 4, 2007, the First Circuit Court, State of Hawaii granted Respondent's motion for Deferred Acceptance of Guilty Plea.

RICO alleges that Respondent's conduct constitutes violations of the following statutes: HRS 467-14 (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise; HRS 467-14 (8) Any other conduct constituting fraudulent or dishonest dealings and HRS 467-14 (20) Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.

In order to conserve on the cost of expenses that would arise from an administrative hearing and possibly compromise on the claims, Respondent Lopez entered into this Settlement Agreement with RICO.

Respondent enters into this Settlement Agreement freely, knowingly, and under no coercion or duress, and does not admit to violating any law or rule. However, the Respondent acknowledges that RICO has sufficient cause to file a Petition for Disciplinary Action against Respondent's license.

The terms of the Settlement Agreement were the payment of an administrative fine of \$500.00 to the DCCA Compliance Resolution Fund. Payment of the fine shall be due at the time this fully executed Settlement Agreement is returned to RICO.

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In addition, if the Respondent fails to abide by the terms of the Settlement Agreement; the Commission could impose further disciplinary action as provide by law to include additional fines and other sanctions. Respondent understands this Settlement Agreement is public record pursuant to HRS Chapter 92F.

This Settlement Agreement was approved by the Real Estate Commission on October 29, 2009.

### **NATHAN H. SUZUKI REC 2005-110-L**

On February 7, 2007 the Department of Commerce and Consumer affairs through its Regulated Industries Complaints Office filed a petition for disciplinary action against the real estate broker license of Nathan Suzuki.

The matter was duly set for hearing, and the notice of hearing and pre-hearing were transmitted to parties.

On August 3, 2007, Petitioner RICO filed a motion for summary judgment and on September 20, 2007 Respondent Suzuki filed a memorandum opposing the motion.

On October 9, 2007 the motion came for hearing and after due consideration the hearings officer (1) Granted the motion (2) ordered that the hearing proceed for the sole purpose of allowing the parties the opportunity to address the matter of sanctions.

Respondent Nathan Suzuki was originally licensed by the Real Estate Commission as a real estate salesperson in 1976 and later as a real estate broker in 2004. Respondent's real estate person license (RB18176) expired on December 31, 2006.

On March 25, 2004, Respondent entered into a plea agreement in a criminal case designated as, "The United States of America vs. Nathan H. Suzuki, Cr. No. 02-00283-ER. In the plea agreement, Respondent admitted that he and others did unlawfully, willfully and knowingly conspire with each other to defraud the United States of America by dishonest and

deceitful means for the purpose of deceiving the U.S. Dept. of Treasury Internal Revenue service in the ascertainment, assessment and collection of taxes from Michael Boulware and Hawaiian Isles Enterprises.

According to the plea agreement Respondent had been employed by Hawaiian Isles Enterprises, Inc. in the 1980's as the company's comptroller and had prepared the personal income tax returns for co-conspirator Michael H. Boulware and his wife from the 1980's through 1994. (Michael Boulware was the president and a shareholder of Hawaiian Isles Enterprise.)

Respondent Suzuki was sentenced to 36 months in prison and thereafter placed on supervised release for three years. In addition, Respondent was also assessed a fine of \$10,000 and a special assessment fine of \$100. The sentence did not include an order that the Respondent pay any restitution.

Petitioner has charged the Respondent with violating the following provisions of the HRS: 467-14 Revocation, suspension, and fine. In addition to any other actions authorized by law, the Commission may revoke any license issued under this chapter, suspend the right of the licensee to use the license, fine any person holding a license, registration, or certificate issued under this chapter, or terminate any registration or certificate issued under this chapter, for any cause authorized by law, including but not limited to the following: 467-14 (8) Any other conduct constituting fraudulent or dishonest dealings, 467-14 (20) Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.

439B-19 Grounds for refusal to renew, reinstate or restore and for revocation, suspension, denial, or condition of licenses. In addition to any other acts or conditions provided by law, the licensing authority may refuse to renew, reinstate or restore or may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the

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licensee or the applicant thereof: 439B-19 (12) Failure to comply, observe, or adhere to any law in a manner such that the licensing authority deems the applicant or holder to be unfit or improper to hold a license.

The uncontroverted evidence was sufficient to establish the following violations against Respondent: 467-14 (8) and (20), and HRS 436B-19 (12). Based on these findings, On January 30, 2008, the Hearings Officer issued to the Commission his Findings of Fact, Conclusions of Law, and Recommended Order Granting Petitioner's Motion for Summary Judgment.

Taking into account the Respondent's established long history of dedicated public service (which included 10 years in the Legislature), testimony presented, numerous letters submitted in the Respondent's defense, no prior complaints against the Respondent's license, and Respondent Suzuki's remorse and acceptance of his lack of professional judgment the Hearings Officer recommended that the Respondent's real estate broker's license be revoked.

However, the Hearings Officer recommends the revocation be stayed and the Respondent be placed on probation for a period of two years from the date of the Commission's Final Order. During the probation, the Respondent shall be permitted to engage in activities of a real estate broker provided he satisfies all applicable requirements for license renewal and complies with all laws governing real estate brokers. Upon successful completion of probation (and verification of license renewal) Respondent Suzuki's license be fully restored.

On February 19, 2008, Petitioner RICO filed its Exceptions to the Recommended Order, disagreeing with the proposed sanction and requested that the Respondent's license be revoked. On March 28, 2008, upon review of the information presented, the Commission accepted and adopted all of the Hearings Officer's Findings of Fact and Conclusions of Law. The Commission, however, modified the Hearings Officer's recommendation to the following:

1. Respondent's real estate broker's license shall be revoked, effective upon receipt of the Commission's approval of a Commission's Final Order revoking his license. Respondent shall turn in all indicia of his licensure to the Commission's Executive Officer within ten days after receipt of notice of the revocation. Respondent may not reapply for a real estate license until the expiration of at least five years from the effective date of the revocation of the license, pursuant to 92-17 (c) (2) Hawaii Revised Statutes. Furthermore, Respondent shall apply to the Commission for a new license in compliance with all applicable laws and rules in effect at the time.

2. If Respondent fails to abide by any term of the Final Order, the Commission at its discretion, may pursue additional disciplinary action as provided by HRS 92-17 and any other applicable law to include further fines and other sanctions as the Commission may deem appropriate.

On April 11, 2008, Respondent Suzuki filed a Statement in Support of Hearings Officer's Recommended Order filed January 30, 2008 and requested the opportunity to appear before and address the Commission at its meeting on May 30, 2008.

Although the Respondent's Statement in Support of Hearings Officer's Recommended Order was filed late (HAR 16-201-45 states "any party may file with the Hearings Officer and serve upon all other parties a statement in support of the recommended decision within fifteen days after receipt of a copy of the written exceptions"), the Commission accepted and reviewed it.

On May 30, 2008, both parties appeared before the Commission and presented oral argument. Respondent Suzuki requested and the Commission approved, a 60-day extension to hear oral arguments on the Commission's Final Order. The extension was also granted to allow Respondent Suzuki time to gather and submit any documentation and exhibits to the Commission for review.

On July 25, 2008 both parties appeared

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before the Commission and presented oral arguments. According to Respondent Suzuki, although Michael Boulware was charged with several crimes, the crime that he had plead guilty to in 2004 with Michael Boulware (conspiring to defraud by dishonest and deceitful means for the purpose of impeding, impairing, obstructing and defeating the lawful functions of the U.S. Department of Treasury, Internal Revenue Service) was dropped by the U.S. Supreme Court. In light of this new evidence, the Respondent suggested the Hearings Officer reopen the hearing for the purpose of taking further evidence.

As such, the Commission orders the Hearings Officer to evaluate the effect of this new evidence and provide an explanation to the following items:

1. Issue a Findings of Fact and Conclusions of Law on the effect of the U.S. Supreme Court dropping the conviction against Respondent Suzuki.

2. How the Commission can place the Respondent's license on probation of two years when according to the Respondent his real estate broker's license was inactivated on April 2005 and expired on December 31, 2006.

3. The Commission ordered the Hearings Officer to explain the difference between this case and the Commission's past decisions ordering revocation for the same and similar violations. The Commission cited several past cases.

On August 18, 2008, the Real Estate Commission issued an Order of Remand for Taking of Further Evidence to the Hearings Officer. This Order of Remand directed the Hearings Officer to reopen the hearing and take further evidence into consideration.

On October 1, 2008, the matter was set for hearing and notice of hearing and pre-hearing conference was transmitted to the parties. A pre-hearing conference was scheduled and held on November 17, 2008.

On December 12, 2008, the Respondent submitted a supplementary brief addressing the issues raised in the Commission's Order of Remand, and on January 7, 2009 filed a memorandum regarding the Order of Remand.

On January 29, 2009, both parties presented oral arguments addressing the issues raised in the Commission's Order of Remand. On January 30, 2008, the Hearings Officer presented the Conclusions of Law which replied to the Commission's inquiry. The response stated:

1. The Court did not hold that Respondent's conduct, "was not improper after all and did not violate any laws or regulations of the Internal Revenue Service for which criminal or civil sanctions were appropriate" as the Respondent alleges, and Boulware did not otherwise affect Respondent's criminal conviction in United States of America v. Nathan H. Suzuki CR. No. 02-00283-ER. On the contrary, Respondent's conviction and admissions in the plea agreement which formed the basis of the Hearings Officer's conclusions remain intact. As such, the Boulware issue does not raise material issues and does not dictate a different conclusion here.

2. The placement of Respondent's forfeited license on probation is expressly authorized by HRS 436B-22 Relinquishment no bar to jurisdiction. The forfeiture, nonrenewal, surrender, or voluntary relinquishment of a license by a licensee shall not bar jurisdiction by the licensing authority to proceed with any investigation, action, or proceeding to revoke, suspend, condition, or limit the licensee's license or fine the licensee.

3. The recommended sanctions were based on a careful consideration of the entire record of proceeding, including, but not limited to, the nature and severity of the violations involved, the various mitigating factors presented on the Respondent's behalf, and an overall assessment of the Respondent's sincerity, credibility, remorsefulness, testimony, and other evidence presented at the hearing. In contrast, none of the Respondents in the cited

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cases appeared at the hearing (except Caprio and Dowsett cases) and nothing in any of those decisions indicated that the Respondents presented any evidence of mitigating circumstances to justify a lesser sanction.

Comparisons between the various cases cited by the Commission and Respondent Suzuki's case were stated accordingly.

On June 1, 2009, the Hearings Officer issued his Findings of Fact, Conclusions of Law, and Recommended Order Granting Petitioner's Motion for Summary Judgment upon Remand.

At its July 31, 2009 meeting, the Commission carefully reviewed the Hearings Officer's recommended decision and voted to accept and adopt all of the Hearings Officer's Findings of Fact and Conclusions of Law. The Commission also determined that Respondent Nathan Suzuki did violate HRS 467-14 (8) and (20) and HRS 436B-19 (12). Based on this information the Commission issued a Final Order agreeing with the Hearings Officer that there are no genuine issues of material fact and Petitioner RICO is entitled to judgment as a matter of law.

As such, the Commission agrees with the Hearings Officer's recommendation and grants RICO's motion for summary judgment.

However, for the violations found, the Commission voted to modify the Hearings Officer's recommended sanctions by requiring that the Respondent's probationary period run for a period of two years from the date of any restoration of his license, instead of two years from the date of the Commission's Final Order.

The Commission approved to revoke the Respondent's real estate broker's license, however that revocation shall be stayed and Respondent Suzuki be placed on probation for a period of two years from the date the Respondent restores his license.

However, Respondent Suzuki, during the probation period shall be permitted to engage

in the activities of a real estate broker (provided he satisfies all applicable requirements for license restoration and complies with all laws governing real estate brokers).

If Respondent violates any of the laws, the Commission, upon the filing of the affidavit from RICO attesting to the violation, may lift the stay and revoke the license.

In the event the license is revoked, the Respondent shall be required to submit all indicia of licensure as a real estate broker in the State of Hawaii immediately to the Executive Officer of the Commission.

This Final order was approved and executed by the Commission on October 29, 2009.

### **CAMBRIDGE MANAGEMENT, INC. REC 2009-19-L**

Cambridge Management, Inc. is a foreign for profit entity doing business in the State of Hawaii. Cambridge Management, Inc. was licensed by the Real Estate Commission as a real estate broker on December 3, 2004 under license number RB 18482.

The license was valid until December 31, 2006. Respondent was licensed again by the Commission on July 30, 2009 under license number RB 20281.

On October 9, 2009, Respondent Cambridge Management, Inc. via its representative Adrian W. Rosehill, Esq. entered into a Settlement Agreement with RICO prior to the filing of Petition for Disciplinary Action and Commission's Final order.

The allegation against Cambridge Management, Inc. was engaging in property management activity with an expired license. Per HRS 467-7 Licenses required to act as real estate broker and salesperson. No person within the purview of this chapter shall act as real estate broker or real estate salesperson, or shall advertise, or assume to act as real estate

*continued next page*

## Administrative Actions

broker or real estate salesperson without a license previously obtained under and in compliance with this chapter and the rules and regulations of the Real Estate Commission.

Respondent admits to the veracity of the allegations and that Respondent's acts violate HRS 467-7. As such, Respondent enters into this Settlement Agreement as a compromise of the claims and to conserve on the expenses of proceeding with an administrative hearing on the matter.

The terms of the Settlement Agreement

were payment of a fine in the amount of \$5,000.00 to the DCCA Compliance Resolution Fund. In addition, if the Respondent fails to abide by the terms of the Settlement Agreement; the Commission could impose further disciplinary action as provide by law to include additional fines and other sanctions. Respondent understands this Settlement Agreement is public record pursuant to HRS Chapter 92F.

This Settlement Agreement was approved by the Real Estate Commission on November 25, 2009.

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## CURRENT NUMBER OF HAWAII LICENSEES

Based on the January 5, 2010, Geographical Report, Department of Commerce and Consumer Affairs, Professional and Vocational Licensing Division, there are a total of 19,209 real estate licensees in the State.

There are 16,481 individual licensees, 1,033 corporations and partnerships, 1,091 sole proprietorships, and 604 limited liability companies and partnerships.

Here is a breakdown by island:

Island	Total	Individual	Corp/Prtnrship	Sole	LLC/LLP
O'ahu	11,364	9,619	634	752	359
Hawaii	2,470	2,074	148	158	90
Maui	2,902	2,520	175	106	101
Kauai	1,366	1,187	65	67	47
Molokai	53	42	4	5	2
Lanai	17	13		1	3
Mainland	1,010	1,002	5	2	1
Foreign	24	24			
Other	3			2	1

The total number of licensees is slightly up by about 200 licensees from the October 2009 Geographical Report.

## **NEW DEADLINE FOR GENERAL EXCISE TAX RETURNS SUBMITTED BY THE DEPARTMENT OF TAXATION**

HONOLULU – The Department of Taxation reminds taxpayers of new general excise tax (GET) filing and payment deadlines for periodic returns beginning with returns filed for the January 2010 period.

Under a law signed last year (Act 196, Session Laws of Hawaii 2009), the deadline for Hawai'i businesses to file and pay their monthly, quarterly, or semiannual GET returns changes from the last day of the calendar month following the close of the tax period to the 20th day of the calendar month following the close of the tax period.

The following are examples of the advanced filing deadline:

1. Monthly filers filing returns for the month of January 2010, must submit returns and payments by February 20, 2010. (Please note that, since February 20, 2010 is a Saturday, the filing deadline is the next business day, Monday, February 22, 2010, to avoid penalties and interest.)
2. Quarterly filers filing returns for the quarter ending March 31, 2010, must submit returns and payments by April 20, 2010.
3. Semiannual filers filing returns for the 6-month period ending June 30, 2010, must submit returns and payments by July 20, 2010.

“Although the new filing deadline could have applied to returns and payments due after May 2009, its implementation was postponed until 2010 to allow Hawai'i taxpayers more time to transition to the new deadline,” said Director of Taxation, Kurt Kawafuchi.

For more information, please see Department of Taxation Announcement No. 2009-11, which is available on the Department's website at [www.hawaii.gov/tax](http://www.hawaii.gov/tax).



### **State of Hawaii Real Estate Commission**

**Telephone 586-2643**

**Website: [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec)**

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This material can be made available to individuals with special needs. Please call the Senior Real Estate Specialist at 586-2643 to submit your request.

**JANUARY - JUNE 2010  
REAL ESTATE COMMISSION  
MEETING SCHEDULE**

<b>Laws &amp; Rules Review Committee – 9:00 a.m. Condominium Review Committee – Upon adjournment of the Laws &amp; Rules Review Committee Meeting Education Review Committee – Upon adjournment of the Education Review Committee Meeting, which is upon the adjournment of the Laws &amp; Rules Review Committee Meeting, which convenes at 9:00 a.m.</b>	<b>Real Estate Commission 9:00 a.m.</b>
<b>Wednesday, February 10, 2010</b>	<b>Friday, February 26, 2010</b>
<b>Wednesday, March 10, 2010</b>	<b>Thursday, March 25, 2010</b>
<b>Wednesday, April 7, 2010</b>	<b>Thursday, April 22, 2010</b>
<b>Wednesday, May 5, 2010</b>	<b>Thursday, May 28, 2010</b>
<b>Wednesday, June 9, 2010</b>	<b>Thursday, June 24, 2010</b>

All meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First.

Meeting dates, locations and times are subject to change without notice. Please visit the Commission's website at [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec) or call the Real Estate Commission Office at (808) 586-2643 to confirm the dates, times and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at (808) 586-2643 to submit your request.

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**State of Hawaii  
Real Estate Commission Bulletin  
King Kalakaua Building  
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